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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
:
Debtors. : Jointly Administered
- - - - - x

**DEBTORS' FIRST OMNIBUS MOTION FOR ORDER PURSUANT TO
BANKRUPTCY CODE SECTIONS 105(a), 365(a) AND 554 AND
BANKRUPTCY RULE 6006 AUTHORIZING REJECTION OF CERTAIN
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND
ABANDONMENT OF PERSONAL PROPERTY EFFECTIVE AS OF
DECEMBER 12, 2008**

The debtors and debtors in possession in the
above-captioned jointly administered cases (collectively,

the "Debtors")¹ hereby move (the "Motion") for entry of an order, pursuant to sections 105(a), 365(a) and 554 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to (i) reject certain unexpired leases of real property, including any amendments, modifications or subleases thereto, as set forth on the attached Exhibit A (collectively, the "Leases"), and any guaranties thereof, effective as of December 12, 2008 and (ii) abandon any equipment, furniture or fixtures located at the premises covered by the Leases (the "Premises"). In support of the Motion, the Debtors respectfully represent:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courcheval, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 365(a) and 554 and Bankruptcy Rule 6006.

BACKGROUND

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

6. Based in Richmond, Virginia, Debtors are a leading specialty retailer of consumer electronics and operate large nationwide electronics stores throughout the United States and Puerto Rico that sell, among other things, televisions, home theatre systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics.

7. Despite significant revenues, the Debtors have suffered two consecutive years of losses. While the Debtors made every effort to improve their financial performance and implement a global turnaround strategy, they were ultimately unable to consummate a successful restructuring outside of bankruptcy. In large part, the Debtors' chapter 11 filings were due to an erosion of vendor confidence, decreased liquidity and the global economic crisis.

8. Thus, the Debtors commenced these cases with the immediate goals of obtaining adequate postpetition financing and continuing their restructuring initiatives commenced prior to the Petition Date, including closing certain stores. In

addition, the Debtors will continue to evaluate their business, work closely with their vendors, and enhance customer relations with a goal of emerging from chapter 11 as a financially stable going concern.

RELIEF REQUESTED

9. By this Motion, the Debtors request the entry of an order under Bankruptcy Code sections 105(a) and 365(a) and Bankruptcy Rule 6006 authorizing the Debtors to reject the Leases and any guaranties thereof, effective as of December 12, 2008.

10. The Debtors are currently performing their review and evaluation of other unexpired leases and subleases that are not the subject of this Motion. As this process continues, the Debtors may identify additional leases to be assumed or rejected. Accordingly, the Debtors reserve the right to seek to assume or reject additional leases in the future. This Motion should not be construed as a determination that any leases not listed herein are to be assumed or rejected.

11. The Debtors further seek authority under Bankruptcy Code sections 105 and 554 to abandon any

equipment, furniture or fixtures located at the Premises on December 12, 2008 (the "Abandoned Property").

BASIS FOR RELIEF

12. In an effort to avoid any postpetition administrative costs and in the exercise of the Debtors' sound business judgment, the Debtors hereby move to reject the Leases.

13. The Leases are comprised primarily of leases of property and facilities at which the Debtors had intended, but have cancelled plans, to open new stores during fiscal years 2009, 2010 and 2011, as well as a certain surplus facilities that the Debtors have identified since the Petition Date as not beneficial to the estate. Each of the Leases is listed on Exhibit A, attached hereto, along with the name of the lessor thereunder.

14. Through the rejection of the Leases, the Debtors will be relieved from paying rent, as well as other costs, including taxes, insurance, maintenance and other related charges associated with the Leases. Currently, the Debtors have no operations in the leased facilities and have no other productive use for the

Premises. However, the Debtors may be obligated to pay rent under the Leases.² Thus, by rejecting the Leases at this time, the Debtors will avoid incurring unnecessary administrative charges for facilities that provide no tangible benefit to the Debtors' estates. The resulting savings from the rejection of the Leases will increase the Debtors' future cash flow and assist the Debtors in managing their estates.

15. The Debtors have analyzed each of the Leases to determine the appropriate date of rejection. The Debtors have concluded that, in order to minimize unnecessary potential costs to the estate, the Leases should be rejected as of December 12, 2008 (the "Rejection Date"). The Debtors thus seek to reject the Leases effective as of the Rejection Date. The Debtors in each case have vacated the properties that are covered by the Leases, and, to the extent applicable,

² Certain of the real property leases listed on Exhibit A and included in this Motion may have been terminated prior to the Petition Date. This Motion has no force or effect with respect to any such terminated Leases. This Motion is not intended to reinstate or otherwise alter the status of any Lease, and does not mean that any particular landlord is entitled to damages for rejection thereof.

turned over to the lessors the keys to the Premises as of the Rejection Date.

16. In considering their options with respect to the Leases, the Debtors have determined in their business judgment that the costs associated with assuming the Leases would be substantial and would constitute an unnecessary drain on the Debtors' cash resources. Based on this analysis, the Debtors have determined that the Leases provide no value to the Debtors' estates and that there remains no viable possibility other than rejection of the Leases.

17. Additionally, the Debtors have determined that the abandonment of the Abandoned Property is appropriate because such property is of inconsequential value and/or the cost of removing and storing such property exceeds its value to the Debtors' estates. Moreover, the Debtors believe that the Abandoned Property is no longer necessary for the operation of the Debtors' businesses.

18. Accordingly, the Debtors believe that rejection of the Leases and any guaranties thereof and abandonment of the Abandoned Property as of the

Rejection Date is in the best interests of their estates, their creditors, and other parties in interest.

APPLICABLE AUTHORITY

I. REJECTION OF THE LEASES IS A SOUND EXERCISE OF THE DEBTORS' BUSINESS JUDGMENT.

19. Bankruptcy Code section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). A debtor's determination to reject an executory contract is governed by the "business judgment" standard. See Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1046-47 (4th Cir. 1985), cert. denied sub nom., Lubrizol Enters., Inc. v. Canfield, 475 U.S. 1057 (1986); In re Extraction Technologies of VA, L.L.C., 296 B.R. 393, 399 (Bankr. E.D. Va. 2001); see also In re HQ Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating that a debtor's decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice).

20. Once the Debtors articulate a valid business justification, "[t]he business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'"

Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

21. The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. See Comm. Of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp., 60 B.R. 612, 615 16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

22. As set forth above, the Debtors have satisfied the "business judgment" standard for rejecting the Leases. The Leases are financially burdensome and unnecessary to the Debtors' ongoing operations and business. Rejection of the Leases is in the Debtors'

best interests because the Debtors are not and are not intending to conduct retail operations at the Premises. Moreover, the Debtors have reviewed the Leases and have determined that the Leases do not have any marketable value beneficial to the Debtors' estates. As such, the Leases provide no economic benefit to the Debtors, nor are such Leases a source of potential value for the Debtors' estates and creditors. Accordingly, rejection of the Leases reflects the exercise of the Debtors' sound business judgment.

23. The Debtors also respectfully request that the Court enter an order setting the effective date of rejection of the Leases as the Rejection Date.

24. Section 365 of the Bankruptcy Code does not specifically address whether the Court may order rejection to be effective retroactively. However, many courts have held that bankruptcy courts may, in their discretion, authorize rejection retroactive to a date prior to entry of the court's order. See, e.g., In re At Home Corp., 392 F.3d 1064, 1065-66 (9th Cir. 2004) (affirming bankruptcy court's approval of retroactive rejection), cert. denied sub nom. Pacific Shores Dev.,

LLC v. At Home Corp., 546 U.S. 814 (2005); In re CCI Wireless, LLC, 297 B.R. 133, 140 (D. Colo. 2003); In re Thinking Machs., Corp., 67 F.3d 1021, 1028 (1st. Cir. 1995) ("[B]ankruptcy courts may enter retroactive orders of approval, and should do so when the balance of equities preponderates in favor of such remediation."); In re Jamesway Corp., 179 B.R. 33, 36-37 (S.D.N.Y. 1995). Indeed, on the Petition Date, this Court entered an order approving rejection of certain non-residential real property leases as of the date the motion was filed. In re Circuit City Stores, Inc., Case No. 08-35653 (Bankr. E.D. Va. Nov. 10, 2008).

25. Rejection of the Leases as of the Rejection Date will not harm or otherwise prejudice the lessors under the Leases, as the Debtors propose to serve this Motion and the proposed order on the lessors, thus providing them with an opportunity to object to the relief granted therein. Moreover, the lessors will be relieved of their own obligations under the Leases, allowing them to cease performance and immediately repossess their property.

26. In summary, the Debtors believe that the proposed rejection of the Leases is tailored to minimize administrative expense, maximize distributions to creditors in these chapter 11 cases, and return control of real property to the lessors quickly. In the exercise of their sound business judgment, the Debtors thus seek authority to reject the Leases effective as of the Rejection Date.

27. Numerous courts, including those in this district, have authorized similar relief. See, e.g., In re Movie Gallery, Inc., et al., Case No. 07-33849 (Bankr. E.D. Va. Oct. 17, 2007); In re Storehouse, Inc., Case No. 06-11144 (Bankr. E.D. Va. Nov. 21, 2006); In re Rowe Furniture, Inc., Case No. 06-11143 (Bankr. E.D. Va. Nov. 21, 2006); In re The Rowe Cos., Case No. 06-11142 (Bankr. E.D. Va. Nov. 21, 2006); In re US Airways Group, Inc., Case No. 02-83984 (Bankr. E.D. Va. Aug. 12, 2002).

II. THE BANKRUPTCY CODE AUTHORIZES THE ABANDONMENT OF THE ABANDONED PROPERTY.

28. Bankruptcy Code section 554(a) provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to

the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Courts give debtors in possession great deference to their decisions to abandon under section 554. See In re Vel Rey Props., Inc., 174 B.R. 859, 867 (Bankr. D.D.C. 1994) ("Clearly, the court should give deference to the trustee's judgment in such matters."). Unless the property is harmful to the public, once the debtors in possession have shown that the property is burdensome or of inconsequential value and benefit, the court should approve the abandonment. Id. at 868.

29. The Debtors believe that the costs of moving and storing the Abandoned Property would far outweigh any benefit to their estates. Moreover, the Debtors believe that any efforts to move the Abandoned Property would unnecessarily delay the rejection of the Leases. Therefore, it is in the Debtors' best interests to abandon the Abandoned Property located at the Premises on the Rejection Date.

30. Numerous courts, including those in this district, have authorized similar relief. See, e.g., In re Movie Gallery, Inc., et al., Case No. 07-33849 (Bankr.

E.D. Va. Oct. 17, 2007); In re The Rowe Cos., Case No. 06-11142 (Bankr. E.D. Va. Nov. 21, 2006).

NOTICE

31. Notice of this Motion has been provided to those parties entitled to notice under this Court's Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 130) and to all lessors under the Leases. The Debtors submit that, under the circumstances, no other or further notice need be given.

WAIVER OF MEMORANDUM OF LAW

32. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

33. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form of the Proposed Order annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: December 12, 2008
Richmond, Virginia

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EXHIBIT A

(List of Real Property Leases)

EXHIBIT A
Unexpired Leases of Real Property

<u>Store Number</u>	<u>Lease Location</u>	<u>Prime Lease/ Sublease</u>	<u>Landlord/ Subtenant</u>
#3355	Mantua Commons Shopping Center Glassboro Rd. Sewell, NJ 08080	Prime	Route 553 Retail, LLC
#3657	East Washington Place Shopping Center Hwy 101 and E. Washington Ave. Petaluma, CA 94594	Prime	Regency Petaluma, LLC
#3755	Waterford Shopping Center Hartford Turnpike Waterford, CT 06385	Prime	BFLO-Waterford Associates, LLC
#3773	Northgate Way Shopping Center NE Northgate Way and 5th Ave. NE Seattle, WA 98125	Prime	Wallace Northgate Development, LLC
#3800	Tonnelle Avenue and 91st Street North Bergen Tonnelle Plaza New Bergen, NJ 07047	Prime	Vornado North Vergan Tonnelle Plaza, LLC
#3875	The Summit at Calabasas NE corner of Lost Hills Rd. and Agoura Rd. Calabasas, CA 91302	Prime	Dollinger Lost Hills Associates
#3886	Colonial Pinnacle Nord du Lac Shopping Center Covington, LA	Prime	CP Nord Du Lac JV, LLC

<u>Store Number</u>	<u>Lease Location</u>	<u>Prime Lease/ Sublease</u>	<u>Landlord/ Subtenant</u>
#3888	Rancho del Chino South Shopping Center Ramona Ave. and Chino Hills Pkwy. Chino, CA	Prime	Chino South Retail PG, LLC
#3890	North Central 'The City' Central Expressway Park Lane Place Shopping Center Dallas, TX 75231	Prime	Harvest/NPE LP
#3895	Hwy. 395 and Topsey Ln. Riverwood Phase 1B Douglas County, NV 89705	Prime	Riverwood Partners, LLC
#4241	Beverly Connection Shopping Center SE corner of La Cienega Blvd. and Beverly Blvd. Los Angeles, CA 90212	Prime	Bevcon I, LLC
#4250	The Pavilion at Port Orange Williamson Blvd. Port Orange, FL 32128	Prime	The Pavilion Port Orange, LLC
#4274	Abercia South Shopping Center Collier Blvd. Naples, FL	Prime	Victoria Estates, Ltd.; Magpond, LLC; Magpond-A, LLC; and Magpond-B, LLC
#4333	Bayonne Crossing Shopping Center Route 440 and East 22 St. Bayonne, NJ 07002	Prime	Cameron Bayonne, LLC

<u>Store Number</u>	<u>Lease Location</u>	<u>Prime Lease/ Sublease</u>	<u>Landlord/ Subtenant</u>
#6040	Westview Corporate Campus 5350 Partners Ct. Frederick, MD 21701	Prime	44 North Properties, LLC
#6040	Westview Corporate Campus 5350 Partners Ct. Frederick, MD 21701	Sublease	American Computer Development, Inc.
#6064	Chastain Meadows Office Complex 225 Chastain Meadows Ct. Kennesaw, GA 30144	Prime	Cole CC Kennesaw GA, LLC
#6145	Chastain Meadows Office Complex 225 Chastain Meadows Ct. Kennesaw, GA 30144	Sublease	Carmax Business Services, LLC
#6286	Village Square I 4555 East Cactus Rd. Phoenix, AZ 85032	Prime	Montevideo Investments, LLC
#6343	1920 Skibo Rd. Fayetteville, NC 28304	Prime	F&M Properties
#6343	1920 Skibo Rd. Fayetteville, NC 28304	Sublease	Books-A-Million
#6348	5166 E. Colonial Dr. Orlando, FL 32803	Prime	Greater Orlando Aviation Authority
#6348	5166 E. Colonial Dr. Orlando, FL 32803	Sublease	Workforce Central Florida
#6352	1107 Hayden Meadows Dr. Portland, OR 97217	Prime	Hayden Meadows, JV
#6352	1107 Hayden Meadows Dr. Portland, OR 97217	Sublease	J.R. Furniture USA, Inc.

<u>Store Number</u>	<u>Lease Location</u>	<u>Prime Lease/ Sublease</u>	<u>Landlord/ Subtenant</u>
#6355	Archdale Marketplace 5831 South Blvd. Charlotte, NC 28217	Prime	Charlotte (Archdale) UY, LLC
#6355	Archdale Marketplace 5831 South Blvd. Charlotte, NC 28217	Sublease	Food Lion, LLC
#6374	18550 W. Bluemound Rd. Brookfield, WI 53045	Prime	Barbara L. Goldsmith
#6374	18550 W. Bluemound Rd. Brookfield, WI 53045	Sublease	Toys R Us, Inc.
#6544	Chastain Meadows Office Complex 225 Chastain Meadows Ct. Kennesaw, GA 30144	Sublease	J.P. Morgan Chase Bank
#6616	1107 Hayden Meadows Dr. Portland, OR 97217	Sublease	Hayden Meadows, JV
Covington Distribution Center	600 First Ave. Covington Industrial Park Gouldsboro, PA 18424	Prime	First Industrial Realty Trust and FR/CAL Gouldsboro Property Holding L.P.